

**CASE NO. 23-1078**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

B.P.J., by next friend and mother, HEATHER JACKSON,

*Plaintiff – Appellant, Cross-Appellee*

v.

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON COUNTY BOARD  
OF EDUCATION; W. CLAYTON BURCH, in his official capacity as State  
Superintendent; DORA STUTLER, in her official capacity as Harrison County  
Superintendent,

*Defendants – Appellees,*

and

WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION,

*Defendant-Appellee / Cross-Appellant,*

and

THE STATE OF WEST VIRGINIA, LAINEY ARMISTEAD,

*Intervenors-Appellees.*

---

On Appeal from The United States District Court  
For The Southern District Of West Virginia  
Case No. 2:21-cv-00316 (Goodwin, J.)

---

---

**BRIEF OF 78 FEMALE ATHLETES, COACHES, SPORTS OFFICIALS, AND  
PARENTS OF FEMALE ATHLETES, AS *AMICI CURIAE* IN SUPPORT OF  
APPELLEES**

---

*Counsel for Amici Curiae listed on the following page*

Kristine L. Brown  
8700 E. Jefferson Ave. #370953  
Denver, CO 80237  
(720) 285-9552  
kristiburtonbrown@gmail.com

R. Daniel Gibson  
N.C. State Bar No. 49222  
Stam Law Firm, PLLC  
P.O. Box 1600  
Apex, NC 27502  
Telephone: 919-362-8873  
Facsimile: 919-387-1171  
Dan@stamlawfirm.com  
*Attorneys for Amici Curiae*

TABLE OF CONTENTS

	Page
Identification of Amici Curiae.....	1
Summary of Argument.....	3
Argument .....	4
I. Females are uniquely and adversely affected when they are forced to compete against males in sports.....	4
A. Females and males cannot experience or compete in physical sports in the same way .....	5
B. The psychological, tangible, and long-term harm suffered by females forced to compete against males is irreversible .....	7
C. Females are suffering real harm that threatens their right to basic equality and equal opportunity .....	9
1. Reka Gyorgy, 2016 Hungarian Olympian, 2x ACC Champion from Virginia Tech.....	13
2. Macy Petty, current NCAA volleyball player .....	14
3. Riley Gaines, 12x All-American, SEC Record Holder.....	14
4. Catrina Allen, World Champion in Disc Golf .....	16
5. Hannah Arensman, professional women's cycling, Cyclocross National Champion .....	17
6. Taylor Allen, West Virginia middle school basketball player and track athlete .....	18
7. Courtney DeSoto, parent of current high school track athlete .....	19
8. Jarrod Jacobi, father of high school ski athlete.....	19
Conclusion .....	21
Certificate Of Compliance .....	212
Certificate Of Service .....	222

## **TABLE OF AUTHORITIES**

<b>Other Authorities</b>	<b>Page(s)</b>
Boys v. Women website: <a href="https://boysvswomen.com/#/world-record">https://boysvswomen.com/#/world-record</a> .....	6
Carole Hooven, <i>T: The Story of Testosterone, the Hormone that Dominates and Divides Us</i> (2021) .....	5
Courtney E. Ackerman, <i>Learned Helplessness: Seligman’s Theory of Depression</i> , (March 2018), available at <a href="https://positivepsychology.com/learned-helplessness-seligman-theory-depression-cure/">https://positivepsychology.com/learned-helplessness-seligman-theory-depression-cure/</a> ) .....	8
EN Hilton & TR Lundberg, <i>Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage</i> , Sports Med. (March 2021), available at: <a href="https://pubmed.ncbi.nlm.nih.gov/33289906/">https://pubmed.ncbi.nlm.nih.gov/33289906/</a> ) .....	6
KM Haizlip, BC Harrison, & LA Leinwand, <i>Sex-based differences in skeletal muscle kinetics and fiber-type composition</i> , Physiology (Bethesda) (Jan. 2015), available at: <a href="https://pubmed.ncbi.nlm.nih.gov/25559153/">https://pubmed.ncbi.nlm.nih.gov/25559153/</a> ) .....	6
ML Blair, <i>Sex-based differences in physiology: what should we teach in the medical curriculum?</i> , Adv Physical Educ. (March 2007), available at: <a href="https://pubmed.ncbi.nlm.nih.gov/17327578/">https://pubmed.ncbi.nlm.nih.gov/17327578/</a> ) .....	6

## IDENTIFICATION OF AMICI CURIAE<sup>1</sup>

Since the founding of this nation, equality has been a constant struggle for various people groups. When the struggle has reached this Court, this Court has consistently been willing to consider how to uphold equal protection, equality of opportunity, and equal rights for all persons in these United States.

Here, the need to protect the equality of women is at issue. Sports is the new playing field, but the ultimate victory sought is for equality. *Amici* are 78 female athletes, coaches, teammates, parents, and relatives of these athletes<sup>2</sup>. These athletes come from many levels of playing – from elementary school to collegiate; from professional to Olympic. No matter their level of accomplishment, their years in their chosen sport, or their age – some minors and some adults – all have been forced to compete against males or to suffer the psychological impact of helplessly watching the forced competition of men against women. Each of the *amici* who have signed on to this brief have a unique story to tell that all weave a common thread essential to this Court’s consideration of this appeal.

Among the 78 athletes, coaches, and family members are: (i) Martina Navratilova, 59x Grand Slam Champion; (ii) Nancy Hogshead-Makar, Olympic Gold Medalist, celebrated civil rights lawyer; (iii) Donna de Varona, Olympic Gold Medalist, World Record Holder, Emmy award winner; (iv) Donna Lopiano, Ph.D., six-time National Champion softball player, nine-time All-American, National Sports Hall of Famer, one of the “Ten Most Powerful Women in Sports” and one of the “100 Most Influential People in

---

<sup>1</sup> Amici certify that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person—other than the amici, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> Athletes, coaches, and family members are identified in the Appendix.

Sports,” former Women’s Athletic Director at the University of Texas, former president of the Association for Intercollegiate Athletics for Women, and former CEO of the Women’s Sports Foundation; (v) Jennifer Sees, former NCAA track and field athlete, high school track coach, and parent of an NCAA soccer player; (vi) Summer Sanders, Olympic Gold Medalist; (vii) Courtney DeSoto, mother of a high school female athlete; (viii) Jill Sterkel, an Olympic swimmer, former world record holder, and former University of Texas head swim coach; (ix) Madisan Debos, current NCAA track athlete; (x) Laura Wilkinson, an Olympian and World Champion in diving and parent to a daughter; and (xi) Evie Edwards, a cyclist and the mother of an elementary-age female cyclist.

*Amici* demonstrate, through painful experiences, that female athletes across the country, at all levels of sports, stand on the precipice of permanently losing their access to equal opportunity and safety in sports. Based on their biological sex, they are at risk of being pushed aside in law and in life in a permanently damaging and irreversible way.

By bringing their names, their voices, and their personal stories to this Court’s attention, *amici* hope to highlight the plea of women and girls across the nation: that this Court affirm their continued right to equal opportunity and to set in granite that females may not be put at a clear and targeted disadvantage based on their biological sex.

Plaintiff-Appellant, Defendants-Appellees West Virginia State Board of Education, Harrison County Board of Education, W. Clayton Burch, Dora Stutler, and the State of West Virginia, and Intervenor-Defendant-Appellee Lainey Armstead have all consented to the filing of this amicus brief. Defendant-Appellant West Virginia Secondary School

Activities Commission has stated that it takes no position on the filing of this brief. *Amici* are advised that, given the parties' positions, a motion for leave is not required.

### **SUMMARY OF ARGUMENT**

*Amici* offer an argument that uniquely defends females' equal rights. By ruling for West Virginia, this Court can reaffirm that women should not lose their equal opportunity to compete in sports on a level playing field. and ensure that females' basic right to be treated equally is still the legal norm in the United States. For women and girls to talk frankly about their biology and the impact of their sex in sport and in life, the words "female," "girl," and "woman" are an essential recognition of scientific reality throughout this brief. Accurate language that clearly describes the biological existence of female humans must have priority over language of preferred personal identification. This is the only way to protect the rights, equality, and safety of female athletes.

More and more women and girls have been facing the humiliating and damaging experience of being forced to compete against males who identify as transgender in the women's sports category. This is an abusive and discriminatory practice. *Amici* ask this Court to affirm the protection of women and girls. One male competing against women and girls degrades every girl he competes with as well as every girl who loses a playing opportunity and every girl who must witness a female athlete being asked to step aside for the feelings of a male despite the knowledge that it is unfair to ask her to do so.

*Amici's* experiences as athletes, coaches, parents, and relatives of female athletes prove that females are uniquely and adversely affected when they are forced to compete against males in sports. Their personal stories show that females and males cannot

experience or compete in physical sports in the same way; that the psychological, tangible, and long-term harm suffered by females forced to compete against males is irreversible; and that females across the nation at all levels of sports are suffering real harm that threatens their right to basic equality, safety, and equal opportunity under the law.

## **ARGUMENT**

### **I. Females are uniquely and adversely affected when they are forced to compete against males in sports.**

It is hard to express the pain, humiliation, frustration, and shame women experience when they are forced to compete against males in sport. It is public shaming and suffering, an exclusion from women's own category. The message to women and girls, 50% of our population, is shared by the parents, teammates, and spectators who watch it unfold. The shame does not disappear after competition is over. It stays forever as a memory of sanctioned public ridicule and a reminder of how women should expect to be treated and set aside for the needs and desires of males.

At every age and every level, a female athlete deserves to know she merits respect and fair competition against other females. She should not have to reach elite status to finally be treated as good enough to play without facing sex discrimination. College women's teams do not play against college men's teams; the high school girls' basketball team does not play against the boys' basketball team. The individual men's and women's state champion in tennis do not play against each other to determine who is the actual champion. The women's Olympic sprint champion does not race the men's champion.



This kind of competition is not allowed because we understand the result would almost always humiliate women. It is not real or fair competition. We know the outcome because the numbers, science, and physical realities predict it with concrete assurance. A far less talented and skilled male will soundly beat a female. With this knowledge, we know the contests would merely be a predetermined public display of the physical differences between males and females. Such competition robs women and girls of a place to be held up in equal value to boys and men. In fact, it solidifies and reinforces that they are not worthy of equal opportunity and recognition.

Each stage of a girl's sports development path provides the opportunity to play – from granting her the last spot on the team to the first-place podium. These experiences – which start at a young age – create inspiration, self-belief, resilience, and confidence – things every girl should be able to seek fairly and with equal opportunity to her male counterparts. We know the names of women like Martina Navratilova because these pathways and opportunities have been protected for females from a young age to the most competitive levels.

**A. Females and males cannot experience or compete in physical sports in the same way.**

There is enormous emotional trauma that accompanies women and girls when they are subject to competing against males in their sports opportunities. This trauma is grounded in real science and an understanding of our physical world as women; it is not a figment of our imagination. As athletes, coaches, and spectators of sport, we know there is a clear and obvious physical difference between boys and girls. We know the physical development of boys – beginning in utero – results in a performance difference between

boys and girls. See Carole Hooven, *T: The Story of Testosterone, the Hormone that Dominates and Divides Us* (2021). We see this play out in sports and physical activity at every age and every level.

Physical fitness tests and records for youth sports showcase a measurable performance disparity between males and females at every age. The genetic gene expressions that differ between males and females number over 6,000 and are not limited to: height, body mass, skeletal structure, strength, muscle quality, center of gravity, limb length ratios, cardiovascular performance, and, of course, reproductive influence. See EN Hilton & TR Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, Sports Med. (March 2021); ML Blair, *Sex-based differences in physiology: what should we teach in the medical curriculum?*, Adv Physical Educ. (March 2007); and KM Haizlip, BC Harrison, & LA Leinwand, *Sex-based differences in skeletal muscle kinetics and fiber-type composition*, Physiology (Bethesda) (Jan. 2015). The effects of any amount of male puberty and androgenization make those early performance differences explode even further.

As athletes, coaches, and parents of female athletes, we know this because we live it. We see and understand that the average age at which male athletes will beat the world records of women is 14-15. See the details of records listed on the Boys v. Women website: <https://boysvswomen.com/#/world-record>. The use, weight, and design of sports equipment such as bikes, balls, bats, javelins, discs, and suits, as well as playing fields and net heights reflect the biological differences between boys and men and girls and women

and are designed to optimize the competition. At every level, we know that less skilled, less determined males beat higher level female athletes because of innate physical difference in the sexes. Physical and developmental differences should not mean that girls and women are less worthy of participating, competing, and winning in sport. Females are half of the world's population and deserve equal opportunities as much as males.

**B. The psychological, tangible, and long-term harm suffered by females forced to compete against males is irreversible.**

When women and girls are asked to compete against male athletes, they are asked to ignore biological reality, the reality that defines female physical bodies. They are asked to pretend there is no hardship or difference in competing against male development that began in utero and resulted in differences in muscle structure, bone structure, response and reaction times, bone density, and finally, reproductive influences, such as monthly cycles and possible pregnancy. They are asked to ignore almost all their lived experiences. This expected disconnection from reality has a very real psychological impact. It tells female athletes, their coaches, and their family members that female bodies don't matter enough to be recognized. This message is received when girls and women are told that rules in their sports don't need to be fair and that female bodies don't have equal representation on a playing field. Women's and girls' positions can be taken by a male if he requests to play with females, despite his physical advantages. Women and girls must stand by as boys and men now have a claim to female spaces, on top of their own full male teams.

The girl who loses her place or her chance to compete must watch a male take a place that was set aside for her. She not only has to deal with a loss; but she must also deal with the psychological trauma that comes from knowing that the loss was not just, fair, or

equal; it was an ‘extra’ spot given to a male – one she had no equal opportunity to compete for. The girls around her must watch a male supplant a place that was once set aside for women. This is mental torture for them. See Courtney E. Ackerman, *Learned Helplessness: Seligman’s Theory of Depression*, (March 2018). Women and girls know this means their fair treatment and their equal opportunity are no longer recognized as important. They are not protected or safe in their own sports. The girls competing receive the message that their competition is not important enough to demand integrity and fairness, while they witness firsthand that the males’ competition and demands are always enough. The damage this causes is irreversible.

As athletes, coaches, and parents of female athletes, we are left with questions. How are we not seen working and training and striving – only to be beaten by a male who has less objective talent and skill but is able to rely on innate male advantage? How have we come to a place where we no longer have fair and equal opportunities in sports and where females are excluded from our own podiums, our own teams, and our own championships because we are expected to affirm males who wish to have our place? How are we expected to compare ourselves to males who everyone knows are physically stronger and biologically different? Why are women not allowed to have a female champion when there is already a male champion – whose place we could never take? Why does a male get to take a female’s place on a team or in a race because it will help him feel better? If the measurement is feelings, why do our feelings not count? Will this Court agree that females no longer have the right to equal opportunities in real competitions? Females are suffering

irreversible psychological damage that compounds every day this unequal treatment continues.

**C. Females are suffering real harm that threatens their right to basic equality and equal opportunity.**

Women and girls had begun to believe that the measured and known performance gap between males and females did not have to be viewed as a stamp of male superiority, but rather as the understood physiological and biological divergence between equally respected members of society. The sex of female bodies, organized around and along divergent developmental paths, affects every cell and system, from reproduction and muscular development to skeletal and cardiovascular systems. Females had come to appreciate that these innate differences did not strip them of an expected place of equality and fair treatment. Sport and physical competition is the one public place where males and females have been guaranteed the right to celebrate their entirely independent and incomparable physical limits under laws like Title IX. Now, these same rules are being interpreted to remove women's access to equal protection and equal opportunities.

Women's sports were created and set aside to be a place where 50% of the population could finally be included and seen as worthy of the title, "champion"; where they could be held up as valuable members of schools, teams, and society.

Now, the nation is being told that fair sports for women and girls was a lie. As athletes, coaches, and parents of female athletes, we know that asking women to compare their bodies to male bodies is not a just request. The athletes know the competition is unfair. The coaches, officials, and sports scientists know the competition is unfair. The parents and spectators know the competition is unfair. And we all know exactly why. We even

know that many of the male athletes taking our positions and titles were not exceptional male athletes in comparison to other males; they now serve as a reminder that a physically unexceptional male is entitled to showcase physical prowess against women and demand women relinquish their opportunity to compete, their place in the event, their hard-earned title, and even their records. The girls and women must comply; the officials must congratulate; the parents must cheer; and the records must be etched for all to appreciate the reinforced reality that males are entitled to replace and show dominance over females in what was once an equal society.

These policies and actions are violating the spirit of the formation of women's sports and laws like Title IX. People in positions of power are looking for the right words to justify this deprivation of equal opportunity. As women, we can only think that it is because we are "just women;" and that even our biological reality is a debatable concept.

The realization that the laws and rights written to protect women are being used against females and the knowledge that people in power cannot or will not see – even in a publicly visible contest – that females are not being treated with the same respect and honor as men is a message that cuts deep into the psyche of women. The women that have experienced this feel the weight of unequal treatment, the stripping of rights, the loss of rewards, and the erasure of fair and equal representation. Women feel the weight of the message that female physical bodies are only good enough if they are able to compete with a physical development of biology that does not match their own. Women see and hear the rule makers and lawmakers argue the purpose of women's sports and, indeed, that the purpose of female athletes is to make a male athlete feel welcome and honored above the

female athletes. Girls and women hear the message that it is a female's job to consider our kindness above our demands for fair and equal treatment. Female athletes are told that "there are only a few" male athletes who want to compete against women, and so females must step aside and make room for them. The awards and record boards, originally meant to help girls and women share new possibilities for those of us born female, are rewritten with male names. Female existence and accomplishment in sports is being erased, name by name. When women compete in races against males and compete on teams with males, females know they are supporting the premise of male dominance; they are supporting the idea that females can only respond with meek compliance when treated as less than men; women and girls are forced to support the erasure of something females were proud of and once esteemed for.

As athletes, coaches, and parents of female athletes, what is our choice? To cede to participate? To give up entirely? Do we not then also give away our rights and our dignity? There is no solution for women and girls without the protection of laws that recognize equal opportunity for females.

The forced competition against males is humiliating. It cannot be fair or equal and yet, girls and women must either walk away from sports opportunities or accept the humiliation. Frustratingly, the rules and laws written for the expressed purpose of equality have not been enough; states now need to write new laws on top of the old ones to prevent the redefinition of the physical reality of being female.

A question being asked is if there is a way to make competition fair for women while still including some of the males who wish to participate with women. This is also

an insulting proposition. Competition is how human beings find their physical limits. It is an invitation to bring one's absolute personal best and match it with the personal best of others in a fair and clean contest. Bringing a body forward to compete that is intentionally and artificially hindered is not in the spirit of that ethos. The question the lawmakers and governing bodies of sport are asking as they try to make guidelines to include males is just how much rules must impair male performance and development to be equated to that of women. This argument – this experiment – is not empowering for women; it harms an entire generation of females. It is deeply misogynistic and demeaning. Girls and women are not encumbered male bodies. Girls and women are uniquely and innately female, and females should not have to fight for representation and see only biology that does not compare to their own rewarded.

As athletes, coaches, and parents of female athletes, we are hurt and shamed that people in power do not find female athletes important enough to speak up for. We are left to cry and sink into depression on our own as we embrace our new understanding of girls' and women's place in the world. We are left with the shame of being unable to compete physically with a male who wants our place, the shame that laws have not been enough, the shame of losing while others cheered in a competition with no integrity, the shame of seeing males so easily take over what was established for us, the shame of having to speak out for something so plainly obvious, and the shame of having been silent, even if just for a moment, while we suffered or watched other women suffer. Not one more girl should go through this. Not one more parent should have to watch their daughter sidelined for a male who is deemed more important than her fair and equal chance.



The rules and record boards have not been fixed. We are not just haunted by our memories and experiences. We are forced to reckon with a public record that condones and historically celebrates our abuse and marginalization. This cannot be the legacy we leave for women and girls; for millions of human beings who are born female.

**1. Reka Gyorgy, 2016 Hungarian Olympian, 2x ACC Champion from Virginia Tech**

I was a senior competing in my last swim meet at the NCAA Women's Swimming & Diving Championships on March 17th, 2022. I swam the 500 freestyle in preliminaries where I got 17<sup>th</sup>, which means I did not make it back to the finals and was first alternate. I watched Lia Thomas [a biological male] from the pool deck win a women's national title in a finals that I deserved to be in because the rules in place did not support biological women. I couldn't help but cry and feel frustrated, angry, and sad. It hurt me, my team, and other women in the pool. A year later, there is still no response to my letter to the NCAA. This is an ongoing, painful reminder of how little all the women at that swim meet matter to the people running our schools and sports competitions.



*Photo 1: The podium at the 2022 NCAA Women's Swimming and Diving Championships where a male took the place of Reka Gyorgy.*

## **2. Macy Petty, current NCAA volleyball player**

While in high school, I competed in club volleyball tournaments across the country with hopes of being recruited to a college volleyball team. At one of these tournaments, with several college recruiters watching, I had to play against a boy in a girls' volleyball tournament. While trying to evaluate our skills, the recruiters instead watched this athlete repeatedly slam the ball in our faces. Because the girls' volleyball net heights are different from boys', this athlete was competing on a net 7.5 inches shorter than he should have as a male. As an athlete, this was humiliating; as a woman, I was horrified to see a boy so easily steal the right to play in brackets that were designed specifically to make volleyball safe and competitive for female bodies. I thought this was a mistake everyone could see, and it would never happen again.

## **3. Riley Gaines, 12x All-American, SEC Record Holder**

I have been a devout swimmer from the age of seven. It's hard to explain the amount of time, hard work, and sacrifice I have made in an effort to succeed at my sport. Every opportunity and every small victory along the way made the next step possible.

Last year, a 6'4" male (Lia Thomas) and I raced at the National Championships, which ultimately resulted in a tie. Upon tying, I was told Thomas (the male athlete) would get the trophy instead of myself as it was necessary for photo purposes. Everything I worked my entire life for was reduced to a photo-op to validate a male's feelings and identity of himself. All the women in the race faced unfair competition and the silencing of our voices through intimidation, emotional blackmail and gas-lighting by these large organizations and institutions.

I still struggle with knowing the people who were supposed to shield us from harm and make sure our sport is ethical were the same people who were silent and allowed us to be discriminated against. This goes against everything federal civil rights laws and Title IX were intended to protect. Women's sports were created to recognize and celebrate the unique physical accomplishments of female athletes. I feel neither recognized nor celebrated. I feel betrayed, belittled, and traumatized. Please don't make any other women go through this.



*Photo 2: Riley Gaines is forced to share the podium with a male.*

#### 4. Catrina Allen, World Champion in Disc Golf

I have been playing sports since I was five, and although I've lost many times over the course of my career, I've never felt as defeated as the day I had to compete against a male opponent in the disc golf female professional division. As tears ran down my face, during an elite series tournament, I realized that even though I have a strict practice regiment, workout plan and am known as a fighter, there is no outworking the physical advantages that a male has. I have since faced four different males in the female category in 26 different tournaments. The worst part is if the women speak out and share their feelings of defeat and frustration, they fear loss of sponsorships and the very public wrath of those defending the male athletes. The women feel helpless, scared, voiceless and isolated.



*Photo 3: A male becomes the women's champion in disc golf in competition against Catrina Allen and other females.*

## **5. Hannah Arensman, professional women's cycling, Cyclocross National Champion**

I was born into a family of athletes. Encouraged by my parents and siblings, I competed in sports from a young age, and I followed in my sister's footsteps, climbing the ranks to become an elite cyclocross racer. Over the past few years, I have had to race directly with male cyclists in women's events. As this has become more of a reality, it has become increasingly discouraging to train as hard as I do only to have to lose to a man with the unfair advantage of an androgenized body that intrinsically gives him an obvious advantage over me, no matter how hard I train.

I have decided to end my cycling career. At my last race at the recent UCI Cyclocross National Championships in the elite women's category in December 2022, I came in 4th place, flanked on either side by male riders awarded 3rd and 5th places. My sister and family sobbed as they watched a man finish in front of me, having witnessed several physical interactions with him throughout the race.

It is also difficult for me to think about the very real possibility I was overlooked for an international selection on the US team at Cyclocross Worlds in February 2023 because of a male competitor.

Moving forward, I feel for young girls learning to compete and who are growing up in a day when they no longer have a fair chance at being the new record holders and champions in cycling because men want to compete in our division. I have felt deeply angered, disappointed, overlooked, and humiliated that the rule makers of women's sports do not feel it is necessary to protect women's sports to ensure fair competition for



women anymore.



*Photo 4: Hannah Arensmen misses the podium while a male takes her place.*

**6. Taylor Allen, West Virginia middle school basketball player and track athlete.**

I'm a middle school track and basketball athlete, and my goal is to play basketball in college. When girls are forced to play against boys in sports, it can turn into a scary situation because boys are built differently, they're rougher, and they have testosterone that we don't have. Even boys at my school who are on their own JV team — whether they're first string or whether they usually sit on the bench — are still really good, and as girls, we're afraid to go against them because they are rougher and built differently

than us. On top of the sports games being turned into a scarier environment, having a boy change in the locker room with girls is uncomfortable for us — specifically for the girls on my team who go to sports to get away from an unsafe environment. Now they have to face that again in a space that was supposed to be all girls. If we allow boys to identify as girls and play on our teams, we experience a higher likelihood of injury, an unsafe environment in our locker rooms, and the probability of losing playing time and our spots on teams. None of this should be taken away from girls.

#### **7. Courtney DeSoto, parent of current high school track athlete**

I am the parent of a minor daughter who runs varsity track in a public school in California. A male freshman joined the women's team this year and is running varsity track and winning every race while the girls watch in bewilderment. This same individual is using the girl's locker room to change and shower. The girls are so uncomfortable that some are not using the locker room themselves anymore. The head coach is about to quit over the injustice of it all. Complaints and concerns for the girls are made to school and district administration, but no one is willing to say anything because our state laws and legislators will not protect our daughters. I have a younger daughter who is also interested in sports, but I am concerned for the future of all our girls.

#### **8. Jarrod Jacobi, father of high school ski athlete**

My daughter lives in a school district where alpine ski racing is a varsity sport. On March 5-7, 2023, the CA/NV Interscholastic Ski & Snowboard Federation (CNISF) state finals for ski athletes occurred at Northstar (Tahoe). Forty-to-50 schools were represented, with about 200 athletes in total. My daughter worked hard all season and

qualified to represent her high school this year.

I was riding the chairlift with her when she told me that the overall winner of the slalom race the day before, who placed third in grand slalom later that day, was "trans." My daughter has a kind, supportive heart, but we must consider the young ladies down the line (her included) who were displaced in standings by a biological male. How might they feel? What if a few more biological males compete in the women's division next year, and the year after that, more? Or she does not qualify for state because she lost out to a biological male; or didn't get a college scholarship for the same reason. These are not hypothetical questions; this is where we are headed unless sane people, not afraid to point out the obvious, speak up and take a stand.

These kids – they are kids – live in the world adults have created. I don't blame the winning athlete; this is a failure at the administrative level and higher. I'll point out the obvious: you ruin women's sports by allowing males to compete in women's sports.

Speaking for parents of female athletes, are we just expected to "come to terms" with this? No amount of hormone therapy or re/de-constructive surgery will change the biological, muscular, and skeletal differences between those born with XX and those born with XY chromosomes. The assumption is that when my daughter competes in the women's division, she competes against other biological females. She is not in a co-ed or open division.

It is one thing to read about these things happening in other places; it is quite another to witness it firsthand. This injustice to young women cannot continue anywhere, especially not on my doorstep.



## CONCLUSION

Every day that girls' and women's equal opportunity in sports is denied, is a day that females suffer irreversible harm and psychological trauma. By affirming the judgment of the district court, this Court can reaffirm that females have not lost their equal opportunity to compete in sports on a level playing field and ensure that the basic right to be treated equally as a person born female is still the legal norm in the United States.

The judgment of the district court should be affirmed.

Respectfully submitted,

May 3, 2023

/s/ Kristine L. Brown

Kristine L. Brown  
8700 E. Jefferson Ave. #370953  
Denver, CO 80237  
(720) 285-9552  
kristiburtonbrown@gmail.com

/s/ R. Daniel Gibson

R. Daniel Gibson  
*Counsel of Record*  
N.C. State Bar No. 49222  
Stam Law Firm, PLLC  
P.O. Box 1600  
Apex, NC 27502  
Telephone: 919-362-8873  
Facsimile: 919-387-1171  
Dan@stamlawfirm.com

*Attorneys for Amici Curiae*

**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) because it is no more than one-half the maximum length of 13,000 words authorized by the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). Excluding the items identified in Fed. R. App. P. 32(f), this Amicus Curiae Brief is 6137 words.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

/s/ R. Daniel Gibson

R. Daniel Gibson

Dated: May 3, 2023

**CERTIFICATE OF SERVICE**

I certify that, on May 3, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice of filing to all registered CM/ECF users.

/s/ R. Daniel Gibson

R. Daniel Gibson

Dated: May 3, 2023

## **APPENDIX**

**APPENDIX**

**LIST OF 78 *AMICI CURIAE* FEMALE  
ATHLETES, COACHES, SPORTS OFFICIALS,  
AND WOMEN ATHLETES' FAMILY  
MEMBERS, MANY OF WHOM HAVE BEEN  
FORCED TO COMPETE AGAINST  
BIOLOGICAL MALES AND ALL OF WHOM  
HAVE SUFFERED THE PSYCHOLOGICAL  
DAMAGE FROM WITNESSING FORCED AND  
UNEQUAL MALE DOMINANCE OVER  
WOMEN IN SPORTS<sup>1</sup>**

**Brianna Alexander\***  
*Cyclist*

**Catrina Allen\***  
*World Champion –  
professional disc golf*

**Taylor Allen**  
*West Virginia middle  
school athlete –  
basketball and track*

**Diana Anglin-Miller**  
*NCAA Champion and  
cheerleading gym  
owner, coach, and  
judge*

**Hannah Arensman\***  
*Professional cyclist*

**Allison Arensman\***  
*Professional cyclist*

---

<sup>1</sup> *Amici* submit this brief solely in their capacities as private citizens. To the extent an *Amicus*'s employer, institution, or association is named, it is solely for descriptive purposes and does not constitute endorsement by the employer, institution, or association of the brief or any portion of its content.

\* An asterisk by a name indicates that the athlete has personally faced a male in sports competition or is directly related to a woman who has personally faced this.

**Sarah Powers****Barnhard**

*Professional volleyball  
player, current coach*

**Mariah Burton****Nelson**

*Former professional  
women's basketball  
player*

**Monika Burzynska\*****Current NCAA**

*swimmer, Penn athlete*

**Kathy Smith****Connor\***

*U.S. National Team  
Member and mother of  
daughter who  
competed in the 2022  
NCAA Swim  
Championships*

**Madisan Debos\***

*Current NCAA track  
athlete*

**Courtney DeSoto\***

*Mother of a female  
high school track  
athlete*

**Donna de Varona****Olympic Gold****Medalist, World**

*Record holder*

**Evie Edwards\***

*Cyclist, mother of  
elementary age female  
cyclist*

**Stephanie Elkins**

*Olympian – swimming*

**Kelly Funderburk**

*Olympian – artistic  
gymnastics*

**Tom Funderburk**

*NCAA Champion –  
men's golf, husband of  
female Olympian*

**Dianna Fussner\***

*Pro Masters disc golf*

**Riley Gaines\***

*All-American  
swimming, tied Lia  
Thomas in the 200 free  
at the NCAA Swim  
Championships*

**Lori Garrison**

*NCAA athlete –  
softball*

**Shawna Glazier\****Cyclist, Triathlete***Annie Grevers***U.S. National Team – swimming***Reka Gyorgy\****Olympian – swimming, missed finals by one placement at NCAA Swim Championships in the 500 free where Lia Thomas won first place***Rena Hedeman\****Mother of female rowing athlete***Nancy Hogshead-Makar***Olympic Gold Medalist***Sarah Hokom\****World Champion – professional disc golf***Jen Hucke***2x NCAA Champion in volleyball, Stanford***Jarrood Jacobi\****Father of a current high school female ski athlete***Rhi Jeffrey***Olympic Gold Medalist – swimming***Lacey John***Olympic Silver Medalist, NCAA Woman of the Year***Raime Jones\****Current NCAA athlete – swimming, lost a finals spot in Ivy League Championships to Lia Thomas***Margot****Kackzorowski\****Current NCAA swimmer, Penn athlete***Ronda Key\****Disc golf athlete*

v

**Samantha  
Keddington\***

*Former professional  
disc golf athlete,  
missed payout  
qualification by one  
placement won by a  
male, current coach*

**Danielle Keen\***

*Professional disc golf,*

**Jess Kruchoski\***

*Fiancé of female  
athlete who competed  
against a male*

**Jocelyne  
Lamoureux-  
Davidson**

*Olympic Gold Medalist  
– hockey*

**Monique  
Lamoureux-  
Morando**

*Olympic Gold Medalist  
– hockey*

**Holly LaVasser\***

*Cyclist*

**Donna Lopiano**

*6x National  
Champion, Former AD  
University of Texas*

**Riona C. McCormick**

*Current rowing athlete*

**Cynthia  
Monteleone\***

*Masters track athlete,  
mother of female track  
athlete, both of whom  
competed against male  
athletes*

**Martina Navratilova**

*59x Grand Slam  
Tennis Champion*

**Sarita Nori\***

*Mother of female  
rowing athlete*

**Keri Olson**

*NCAA Champion –  
tennis, mother of  
female athlete*

**Abigail Pearson\***

*Mother of two female  
athletes who have been  
forced to compete  
against males*

**Macy Petty\***

*Current NCAA athlete  
– volleyball*

**Mary T. Plant**

*Olympic Gold Medalist  
and world record  
holder*

**Lori Post\***

*Mother of NCAA  
female swimmer who  
competed against Lia  
Thomas*

**Mia Rodriguez**

*West Virginia middle  
school athlete,  
basketball*

**Genoa Rossi**

*Current NCAA water  
polo athlete, U.S. Jr.  
National Team*

**Linnea Saltz\***

*NCAA track and field  
runner, 3x Big Sky  
Conference Champion*

**Paula Scanlan**

*NCAA swimmer, Penn  
athlete*

**Jennifer Sees**

*NCAA pole vaulter,  
current high school  
track coach, mother to  
a signed NCAA soccer  
player*

**Jeri Shanteau**

*National Champion,  
U.S. National Team  
member – swimming*

**Sharon Shapiro**

*NCAA Champion and  
U.S. National Team –  
women's artistic  
gymnastics*

**Sandy Shasby\***

*Family member of a  
female athlete*

**DeNee Shepherd\***

*Professional disc golf*

**Bre Showers**

*NCAA Champion –  
artistic gymnastics*

**Taylor Silverman\***

*Skateboard athlete*

**Anne Simpson**

*NCAA rowing athlete*



vii

**Summer Sanders**  
*Olympic Gold Medalist*

**Maya Tait\***  
*NCAA rowing athlete*

**Lori Stenstrom**  
*National Champion,  
former American  
Record holder, mother  
of female athletes*

**Inga Thompson**  
*Olympian – cycling*

**Leanne Venema\***  
*Mother of female  
NCAA swimmer*

**Steve Stenstrom**  
*NFL quarterback,  
father of female athlete*

**Eric Venema\***  
*Father of female NCAA  
swimmer*

**Jill Sterkel**  
*Olympian –  
swimming, former  
University of Texas  
head swim coach*

**Sue Walsh**  
*Olympian –  
swimming, coach,  
sports official*

**Tracy Sundlan**  
*5x Olympic coach,  
manager, and  
administrator – track  
and field*

**Claudia Westholder**  
*NCAA swimmer,  
mother of female  
athlete*

**Barry Switzer**  
*Super Bowl Champion,  
NFL and NCAA head  
football coach*

**Max Wettstein**  
*Father of U.S. Olympic  
skateboard team  
member*

**Becky Switzer**  
*Olympic and NCAA  
Coach – women's  
artistic gymnastics*

**Val Whiting**  
*National Champion,  
WNBA*

viii

**Laura Wilkinson**  
*Olympian and World  
Champion – diving,  
mother of female  
athlete*

**Sippy Woodhead**  
*Olympian, World  
Record holder –  
swimming*